Supreme Court, U. S.
FILED
NOV 11 1977
MICHAEL RODAK, JR., CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1977

No. 76, Original

STATE OF CALIFORNIA,
Plaintiff,

vs.

STATE OF TEXAS,
Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT
and
MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

MYRON SIEDORF
Chief Inheritance Tax Attorney
JAMES R. BIRNBERG
Assistant Inheritance Tax Attorney
107 South Broadway
Los Angeles, California 90012

JEROME B. FALK, JR.
STEVEN L. MAYER
HOWARD, PRIM, RICE, NEMEROVSKI,
CANADY & POLLAK
A Professional Corporation
650 California Street, Suite 2900
San Francisco, California 94108
Telephone: (415) 434-1600
Attorneys for Plaintiff

PERNAU-WALSH PRINTING CO. - 562 MISSION STREET - SAN FRANCISCO, CA 94105

Subject Index

	Page
Motion for leave to file complaint	1
Memorandum of plaintiff in support of motion for leave to file complaint	3
Jurisdiction	3
Statement	4
Conclusion	16
Complaint	17
I. Jurisdiction	17
II. Parties	18
III. Factual background	19
IV. Pending proceedings	20
V. Controversy between states	23

Table of Authorities Cited

Cases

	Pages
Arizona v. New Mexico, 425 U.S. 794 (1976)	14
Estate of Dorrance, 287 U.S. 660 (1932), 288 U.S. 617 (1933) and 298 U.S. 678 (1936)	13
Hill v. Martin, 296 U.S. 393 (1935) (per curiam), affirming 12 F. Supp. 746 (1935)	13
Hughes Tool Co. v. Trans World Airlines, 409 U.S. 363	4
Illinois v. City of Milwaukee, 406 U.S. 91 (1972)	14
Massachusetts v. Missouri, 308 U.S. 1 (1939)	14
Nevin v. Martin, 307 U.S. 615 (1939) (per curiam), affirming 22 F. Supp. 836 (D.N.J. 1938)	12
Ohio v. Wyandotte Chemicals Co., 401 U.S. 493 (1971)	14
Riley v. New York Trust Co., 315 U.S. 343 (1941)	12
Texas v. Florida, 306 U.S. 398 (1938)	4, 7, 8, 9, 10, 11, 12, 15, 16
Tumey v. Ohio, 273 U.S. 510 (1927)	11
United States v. Louisiana, 339 U.S. 699 (1950)	16
Ward v. City of Monroeville, 409 U.S. 57 (1973)	11
Washington v. General Motors Corp., 406 U.S. 109 (1972)	14
Worcester County Trust Co. v. Riley, 302 U.S. 292 (1937)	12, 13

Codes

California Probate Code:	
Section 605	21
California Revenue and Taxation Code:	
Section 13307	5
Section 13308	5
Section 13309	5
Section 13406	5
Sections 14197-14197.13	13
Sections 14199-14199.13	13
Sections 14501 et seq.	21

Constitutions

United States Constitution:	Pages
Article III, Section 2	3, 11

Statutes

8 Del. C. § 169	5, 22
Tex. Tax-Gen. Ann.:	
Article 14.05	5
Article 14.12	6
26 U.S.C.:	
Section 2001	6
Section 2011	6
Section 2032	23
28 U.S.C.:	
Section 1251(a)(1)	3, 14, 17
Section 1251(b)(2)	14
Section 1257(2)	14
Section 1341	13
Section 1872	16
Section 2283	13

Other Authorities

Hart & Wechsler, the Federal Courts and the Federal System 287 ¶(7) (2d ed. 1973)	14
CCH Inheritance, Estate & Gift Tax Reporter ¶12,035	13
Reese, Does Domicile Bear a Single Meaning? 55 Col. L. Rev. 589 (1955)	10
The Hughes Estate (Armadillo Press, La Porte, Texas)	4

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. , Original

STATE OF CALIFORNIA,
Plaintiff,

vs.

STATE OF TEXAS,
Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of California, by its duly authorized representative, Kenneth Cory, Controller, asks leave of the Court to file its Complaint against the State of Texas submitted herewith.

Dated: November 11, 1977

Respectfully,

MYRON SIEDORF
Chief Inheritance Tax Attorney
JAMES R. BIRNBERG
Assistant Inheritance Tax Attorney
JEROME B. FALK, JR.
STEVEN L. MAYER
HOWARD, PRIM, RICE, NEMEROVSKI,
CANADY & POLLAK
A Professional Corporation
Attorneys for Plaintiff

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. , Original

STATE OF CALIFORNIA,
Plaintiff,

VS.

STATE OF TEXAS,
Defendant.

MEMORANDUM OF PLAINTIFF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

JURISDICTION

The original jurisdiction of the Court is invoked pursuant to Article III, Section 2 of the Constitution of the United States and 28 U.S.C. §1251(a)(1). The controversy concerns inconsistent claims by California and Texas that Howard R. Hughes died domiciled within their respective borders. If each state successfully imposes a death tax in its own courts, the resulting state and federal tax claims will exceed the net assets of the estate by a substantial

margin. Jurisdiction to resolve inconsistent claims of domicile for state inheritance tax purposes in this unique circumstance was established in *Texas v. Florida,* 306 U.S. 398 (1938). The proposed Complaint of California in this case seeks only an adjudication of the adverse claim of Texas that decedent was its domiciliary for inheritance tax purposes, all other issues pertaining to the probate of the estate being proper subjects for local adjudication.

STATEMENT

On April 5, 1976, Howard Robard Hughes, Jr. ("decedent") died in a chartered jet which was rushing him from Mexico to a hospital in Texas. His sizeable estate is now the subject of probate proceedings pending in California, Texas, and Nevada, each of which was arguably the state of Hughes' domicile.[1] The uncertainties concerning domicile, combined with numerous other unresolved questions not presented herein, have generated a tangle of litigation which may well become "a 20th-century sequel to Bleak House" (*Hughes Tool Co. v. Trans World Airlines,* 409 U.S. 363, 393 (Burger, C.J., dissenting)).[2]

---

[1]There are also probate proceedings pending in Louisiana and Delaware but to our knowledge, no claim has been advanced that Hughes was a domiciliary of either of those states.

[2]The litigation spawned by the death of Howard Hughes is sufficiently extensive and far-flung that a comprehensive newsletter, *The Hughes Estate* (Armadillo Press, La Porte, Texas), has been published for the use of those persons concerned with the estate. There are, as noted, three pending probates in which

Both California and Texas are contending that Hughes was a domiciliary of their respective jurisdictions and each is seeking to collect the resulting inheritance tax. The effect of the multiple taxation by both California and Texas would be the imposition of death taxes which substantially exceed the net assets of the estate. The effective rate of tax in California on all amounts in excess of $400,000 is 24% (see CALIF. REV. & TAX CODE §13406;[3] the effective rate of tax in Texas (including the so-called "pick-up tax") on amounts exceeding $1,000,000 is approximately 16% (see TEX. TAX-GEN. ANN. Art. 14.05;

---

the question of domicile will, unless this Court assumes jurisdiction, be adjudicated. In addition to the Nevada, California and Texas proceedings, ancillary probates are pending in at least two other states (see note 1, *supra*); if inconsistent adjudications of domicile occur, the ancillary jurisdictions will face difficult problems in the administration of the respective local estates.

There is also pending in the courts of Delaware an interpleader action instituted by Summa Corporation in which it seeks cancellation of decedent's shares of Summa and a judicial determination of their ownership. Complaint ¶8. Jurisdiction was asserted on the basis of 8 DEL. C. §169, which provides that the situs of shares in a Delaware corporation is Delaware regardless of the location of the share certificates.

A will, known popularly as the "Mormon will" or "Dummar will", has been offered for probate in the Nevada, Texas and California proceedings. (Complaint ¶¶5, 7). Its validity is the subject of considerable controversy, to say the least.

Additionally, the Howard Hughes Medical Institute has alleged that Hughes executed a "lost will" which devised his entire estate to it. This contention is apparently the subject of proceedings in Nevada alone, at least at present. (Complaint ¶7).

We stress that a determination of the Texas domicile claim is all that is sought in this Court; all other questions will properly be the subject of adjudication in the state courts having jurisdiction.

[3]Under California law, decedent's next-of-kin (and, *a fortiori,* the remaining heirs) are classified as "Class C Transferees", who are subject to the maximum rates. Lesser rates would have been applicable if Hughes had left a wife, lineal issue or nieces or nephews. See *id.* §§13307, 13308, 13309.

art. 14.12); and the federal estate tax on amounts in excess of $10,000,000 is 77%, less a credit of 16% for state death taxes (See 26 U.S.C. §§2001, 2011).

The estate has filed a federal estate tax return reflecting a valuation of $166,800,140. (Complaint ¶ 10). If the assets of the estate are valued as reported in the federal estate tax return, the taxes and interest due to Texas, California, and the United States will total $72,609,296, and will exceed the net assets of the estate by approximately $21 million. (Complaint, ¶ 13).[4]

Accordingly, if Texas were successful in establishing a Texas domicile in its state court proceedings and in collecting its inheritance taxes from the estate, after payment of federal taxes, interest, and other liabilities there would remain less than $11,351,580 (using the estate's valuations) against a California inheritance tax of more than $32 million (Complaint ¶ 13).

Texas and California are, therefore, on a collision course. Whichever state perfects and executes its

[4]The computation of the various taxes is described in Appendix "A" to the Complaint. The California tax is greater in proportion to the federal estate tax than the respective rates would imply because California law does not permit certain deductions from the gross estate which are allowable for purposes of determining the federal estate tax.

The actual values of the estate's assets may be significantly greater than as reported by the estate in its federal estate tax return. The Internal Revenue Service and California (and, presumably, Texas) are each in the process of determining administratively the value of the estate. If the assets of the estate are found to have a greater value than as reported, the amount by which the taxes exceed the net assets will be increased. Complaint ¶14.

judgment will irreparably injure the other by depriving it of the very assets needed to satisfy the tax.[5]

The risk of inconsistent adjudications in the California and Texas proceedings is anything but hypothetical. Like the decedent in *Texas v. Florida, supra,* Howard Hughes lived so "as to afford substantial basis" (306 U.S., at 411) for multiple claims of domicile. Born in Houston, Texas in 1905, he resided in Texas until 1926 when, at the age of 20, he moved to California. From the time he moved to California until the day he died, Hughes apparently returned to Texas only for occasional visits. Nonetheless, he continued to use Texas as a mailing address and occasionally claimed Texas as his domicile long after he ceased to have any physical presence there.

Hughes lived in California for 40 years, from 1926 to 1966. During this time, he developed substantial new business interests and investments, including film

[5]Although the estate has previously claimed that Nevada was the state of decedent's domicile, the disagreement between California and the estate as to whether Hughes died a domiciliary of Nevada or California would be capable of resolution by compromise except for the presence of the inheritance tax demand of Texas. Indeed, California and the interested heirs and administrators have agreed upon a provisional settlement whereby, if the Texas tax claim is resolved adversely to Texas by the Court, they will agree to pay an inheritance tax to California. The provisional settlement is, however, not binding upon any of the parties thereto if the Court declines to exercise its original jurisdiction herein. Complaint ¶16. While this provisional settlement will therefore be of little value if the Court fails to exercise its original jurisdiction to resolve the dispute between Texas and California, it does serve to narrow the issue which the Court is asked to adjudicate, for the controversy is thereby squarely focused upon the question of whether Texas was the state of domicile; if it was not, the remaining inheritance tax claim of California will be disposed of by the provisional settlement agreement.

production, aviation and aircraft manufacture, and numerous other ventures in California. Until his death, the center of his business operations remained in California, although he acquired substantial property elsewhere, both directly and through his wholly-owned corporation, known in later years as Summa Corporation.

In 1966, Hughes traveled to Boston, Massachusetts, where he spent five months. He then travelled to Las Vegas, Nevada, where he remained until 1970. Thereafter he moved his retinue from place to place, travelling successively to the Bahamas, Nicaragua, Vancouver, London, and the Bahamas again, eventually arriving in Acapulco, Mexico. So far as is known, Hughes formed no personal roots in Nevada or in any subsequent location, living in almost total seclusion in a hotel room from which he seldom, if ever, ventured. In early April, 1976 while in Acapulco, Mr. Hughes became critically ill and was rushed by plane for medical treatment to Houston, Texas. He died en route.

While even this bare outline of Mr. Hughes' life demonstrates that different jurisdictions could well reach conflicting determinations as to his domicile, there are several additional reasons why conflicting findings of domicile are entirely likely. First, Hughes made "numerous self-serving statements . . . as to his domicile, which, because made for the purpose of avoiding liability for state . . . taxes levied on the basis of domicile tended to conceal rather than reveal the true relationship" (*Texas v. Florida, supra,* at

411) of Hughes to the various jurisdictions in which domicile is claimed. Second, Hughes' business interests and investments were extraordinarily diverse, both in terms of geographical location and field of commercial endeavor, despite the fact that the "communications center," through which he controlled his vast empire, remained in California throughout his travels. Finally, the usual indicia of domicile, such as the establishment of a permanent place of residence, the presence or absence of personal effects and community involvement are absent in this case, due to the unusual, indeed bizarre, way in whieh Hughes lived. As far as is presently known, "home" for Hughes during the last ten years of his life was a series of barren hotel rooms which fulfilled only the most primitive function of a home: the provision of shelter against the rain.

This case is thus a paradigm—albeit an extreme one—of the problems inherent in the domicile concept. While the "hornbook law" of domicile can be simply stated—"domicile" equals "physical presence" plus "intent to remain"—the concept of domicile is easier to define than to apply. Not only does one legal concept have to fit an infinite variety of living situations, the determination of domicile usually hinges on the elusive finding that the decedent intended to make a place his home. And what at first blush may appear as most direct evidence of the requisite intention—a person's statements—will often, as here, be more the reflection of calculated advantage than of an actual intention to establish a permanent home. See *Texas v. Florida, supra,* at 411. The risk of incon-

sistent adjudications in this case is thus exacerbated by both the manner in which decedent lived and the ephemeral nature of the domicile concept.[6]

The Court's jurisdiction to resolve this controversy between California and Texas is established by *Texas v. Florida,* 306 U.S. 398 (1938). There, on facts remarkably like those presented here, the Court accepted jurisdiction over an original proceeding involving conflicting inheritance tax claims by four states, each of which had asserted that the decedent was a domiciliary. The Court acknowledged that inconsistent adjudications of domicile and the accompanying imposition of multiple inheritance taxes were constitutionally tolerable *(id.,* at 410; see pp. 12-13, *infra)* and that the judgments of each state assessing tax liability were binding upon the parties to the proceedings and entitled to full faith and credit. *Id.* But while no federal question is presented by multiple and inconsistent imposition of domicile-based inheritance taxes, the Court found appropriate the invocation of its original jurisdiction where the claims of the respective states (and the federal estate tax) exceeded the net assets of the estate:

[6]Professor Reese has succinctly described the difficulties inherent in the ascertainment of domicile:

> "The rules relating to the determination of domicile are extremely general and flexible in operation, revolving as they generally do around the intention to make a home. And, in close cases, differing inferences as to this intention can easily be drawn from the evidence presented . . . . The rules of domicile are extremely flexible in application, both because of their generality and because they depend so frequently in ultimate analysis upon the determination of a question of fact as to the individual's attitude of mind towards the place in question." Reese, *Does Domicile Bear a Single Meaning?* 55 COL. L. REV. 589 (1955).

> "The essential of the bill in the nature of interpleader is that it calls upon the court to exercise its jurisdiction to guard against the risks of loss from the prosecution in independent suits of rival claims where the plaintiff himself claims an interest in the property or fund which is subjected to the risk. The object and ground of the jurisdiction are to guard against the consequent depletion of the fund at the expense of the plaintiff's interest in it and to protect him and the other parties to the suit from the jeopardy resulting from the prosecution of numerous demands, to only one of which the fund is subject." *(Id.,* at 406-07).

In this case, the risk of inconsistent findings of domicile—the potential for an infliction of death taxes which would exceed the available assets of a legendary estate—is far more than the "fair probability" that the Court found to justify the assumption of jurisdiction in *Texas v. Florida, supra.*[7]

Several settled principles make inevitable the conclusion that, absent the exercise of this Court's original jurisdiction for a "single litigation binding on the

[7]The possibility of inconsistent adjudications is enhanced by the reality that domicile will be determined by local juries who cannot be unaware of the consequences of a finding by them of a local domicile. Each state which obtains a finding of domicile in its own courts will receive substantial tax revenues even if—for the reasons discussed herein—its full tax claim will not be satisfied. Indeed, the potential recovery could be large enough to diminish the tax burden faced by each citizen in Texas or California. *Cf. Tumey v. Ohio,* 273 U.S. 510 (1927); *Ward v. City of Monroeville,* 409 U.S. 57 (1973). It was, of course, precisely to eliminate the intrusion of parochial interests in controversies affecting two or more states that this Court was established as the exclusive forum to resolve interstate controversies.

parties" (*Texas v. Florida, supra,* at 412), there simply is no available means by which any of the interested parties can protect against the substantial possibility of the multiple imposition of inheritance taxes in excess of the available assets of the estate.

First, California is not a party to the Texas proceedings and will not be bound by any determination of domicile made therein. *Texas v. Florida, supra,* at 411; *Riley v. New York Trust Co.,* 315 U.S. 343 (1941). Texas may determine that Hughes was a domiciliary of Texas and impose its inheritance tax, but California will not be bound by that judgment.

Second, California is therefore free to determine, inconsistently with any Texas judgment, that Hughes died domiciled in California and tax the estate and heirs accordingly. *Nevin v. Martin,* 307 U.S. 615 (1939) (per curiam), *affirming* 22 F. Supp. 836 (D.N.J. 1938). In that event, neither the Texas judgment nor the California judgment will be reviewable in this Court because no federal question is presented. *Worcester County Trust Co. v. Riley,* 302 U.S. 292 (1937); *Texas v. Florida, supra,* at 410-11.[8] Indeed,

[8]The Court said in *Worcester County Trust Co. v. Riley, supra,* at 299-300:

> "Petitioner's real concern is that the judgment of the California court, if it should decide that decedent was domiciled there, may be erroneous or may conflict with that of the Massachusetts courts. But conflicting decisions upon the same issue of fact do not necessarily connote erroneous judicial action. Differences in proof and the latitude necessarily allowed to the trier of fact in each case to weigh and draw inferences from evidence and to pass upon the credibility of witnesses, might lead an appellate court to conclude that in none is the judgment erroneous. In any case the Constitution of the United States does not guarantee that the decisions of state courts shall be free from error [citations] or require that pronouncements shall be consistent. [citation]. Neither the Fourteenth Amendment nor the full faith and credit clause requires uniformity in the decisions of the courts of different states as to the place of domicil, where the exertion of state power is dependent upon domicil within its boundaries [citations]. Hence it cannot be said that the threatened action of respondents involves any breach of state law or of the laws or Constitution of the United States."

the Court has consistently refused to review inconsistent adjudications of domicile. *See, e.g.,* the denials of certiorari in *Estate of Dorrance,* 287 U.S. 660 (1932); 288 U.S. 617 (1933); and 298 U.S. 678 (1936).

Third, the estate and heirs are without remedy against multiple imposition of tax. They may not interplead the competing states (or even the tax collection officials thereof) in a federal district court because of the bar of the Eleventh Amendment. *Worcester County Trust Co. v. Riley, supra.* They may not enjoin in federal court the collection of the tax by either state (*Hill v. Martin,* 296 U.S. 393 (1935) (per curiam), *affirming* 12 F. Supp. 746 (1935)) because, *inter alia,* of the anti-injunction rule of 28 U.S.C. §2283; see also 28 U.S.C. §1341. As already noted, inconsistent adjudications by the state courts are not reviewable in this Court on certiorari. Finally, the arbitration processes established by the Uniform Act on Interstate Arbitration of Death Taxes (see CALIF. REV. & TAX CODE §§14197-14197.13) and the alternative statutory arbitration procedure in force in several states (see *id.* §§14199-14199.13) are unavailable because Texas has not adopted either of those Acts. See CCH INHERITANCE, ESTATE & GIFT TAX REPORTER ¶12,035.

Fourth, neither state has any remedy against the other except by original suit in this Court. As just noted, the arbitration mechanism is unavailable. Neither state can obtain jurisdiction over the other absent a voluntary appearance; beyond that, this Court's original jurisdiction over controversies between states is exclusive. 28 U.S.C. §1251(a)(1).

Accordingly, this Motion presents no occasion for consideration of whether the existence of alternative forums renders the invocation of the Court's original jurisdiction inappropriate. *Compare Massachusetts v. Missouri,* 308 U.S. 1, 19-20 (1939); *Ohio v. Wyandotte Chemicals Co.,* 401 U.S. 493 (1971); *Illinois v. City of Milwaukee,* 406 U.S. 91, 93 (1972); *Washington v. General Motors Corp.,* 406 U.S. 109 (1972).[9]

[9]If there were some alternative means by which the dispute between California and Texas might be resolved, the Court would then be presented with the question of whether the principle of the cases cited above—that original jurisdiction need not be exercised where an alternative forum exists—applies to suits between states founded on the Court's *exclusive* jurisdiction under 28 U.S.C. §1251(a)(1) as well as to suits between a state and a citizen of another state under the Court's *concurrent* jurisdiction established by 28 U.S.C. §1251(b)(2).

In *Arizona v. New Mexico,* 425 U.S. 794, 798-99 (1976), Mr. Justice Stevens filed a concurring opinion in which he suggested that the principle by which leave to file is denied where there is another forum may be inapplicable to suits under 28 U.S.C. §1251(a)(1) where the Court's jurisdiction is exclusive. *Accord:* HART & WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 287 ¶(7) (2d ed. 1973). While the Court's opinion appears to take a different view, that case was unique in that the very question Arizona sought to litigate was pending in a lower court and, if that court were to sustain the tax, the issues raised could have been presented to the Court by an appeal as of right under 28 U.S.C. §1257(2); the result of denying leave to file an original complaint was, in effect, merely to divert the fact finding to the lower court subject to the ultimate resolution of the legal issue on appeal in this Court. See 425 U.S., at 797. The issue posed by Justice Stevens need not be faced in this case, for here there is no alternative forum and any decision of a Texas court finding Texas domicile could not be reviewed in this Court.

In this case, as in *Texas v. Florida,* "[t]he risk that decedent's estate might constitutionally be subjected to conflicting tax assessments in excess of its total value and that the right of [plaintiff] or some other state to collect the tax might thus be defeated [is] a real one. . . ." 306 U.S., at 410.

In an important respect this case is an even stronger one for the exercise of the Court's original jurisdiction than *Texas v. Florida, supra.* In that case the total net estate was exceeded by death taxes only on the hypothesis that, in addition to the federal estate tax, inheritance taxes would be levied by no less than *four* states; if only one of the four claimant states failed to establish domicile in its tax proceedings, the assets of the estate would have been sufficient to satisfy the tax claims of those remaining.[10] In short, jurisdiction was founded upon the "danger that out of the same events four state courts will spell four different domiciles. . . ." 306 U.S., at 431 (dissenting opinion). In the present case, the high rates of taxation which are applicable create a circumstance in which the courts of only *two* states—California and Texas—need disagree as to the decedent's domicile for the assets of the estate to prove insufficient to meet the resulting tax claims.

[10]The total net estate fell $1,589,877 short if all tax claims were sustained; the smallest of the four state tax claims was $4,663,857. 306 U.S., at 409 n. 2. There was, moreover, some reason to question whether at least one of the four states would seek to impose the tax. See Brief For the State of New York, at 2, quoted at 306 U.S., at 434 n. 10 (dissenting opinion).

CONCLUSION

For the reasons stated, the Motion should be granted, and the matter referred to a Special Master.[11]

DATED: November 11, 1977.

Respectfully,

MYRON SIEDORF
Chief Inheritance Tax Attorney
JAMES R. BIRNBERG
Assistant Inheritance Tax Attorney

JEROME B. FALK, JR.
STEVEN L. MAYER
HOWARD, PRIM, RICE, NEMEROVSKI,
CANADY & POLLAK
A Professional Corporation
Attorneys for Plaintiff

[11]No jury is required, this being an action in equity (*Texas v. Florida, supra*) as to which 28 U.S.C. §1872 does not apply. *United States v. Louisiana*, 339 U.S. 699, 706 (1950). The case is, of course, an appropriate one for the appointment of a special master, and the proposed complaint accordingly asks that the matter be referred.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. , Original

STATE OF CALIFORNIA,
Plaintiff,

vs.

STATE OF TEXAS,
Defendant.

COMPLAINT

Plaintiff, appearing through its duly authorized representative, Kenneth Cory, Controller of the State of California, alleges:

I. JURISDICTION

1. This is a controversy between two states within the Court's original and exclusive jurisdiction under Article III, Section 2 of the Constitution and 28 U.S.C. §1251(a)(1). The controversy exists because the State of California ("California") and the State of Texas ("Texas") each seek in the courts of their respective states to impose death taxes on the estate

of Howard Robard Hughes, Jr. ("decedent"), based upon assertions of California and Texas domicile. Should both states be successful in their respective courts, the resulting judgments (plus the federal estate tax due in any event, the expenses of administration, and other lawful liabilities of the estate) will exceed the estate's value. Since neither California nor Texas has appeared or will appear voluntarily in each other's courts and because this Court has exclusive jurisdiction over controversies between states, this Court offers the only available forum to achieve a resolution of the domicile issue which will be binding on all parties and ensure that the state to which the tax is properly due will be able to collect it.

II. PARTIES

2. Plaintiff California and defendant Texas are both states of the United States of America. Each state maintains, and has maintained at all relevant times herein, a system of inheritance taxation whereby statutory liens on the right of succession are imposed on real and tangible personal property located within its borders and the intangible personalty, wherever situated, of persons domiciled within each state. The responsible authorities in each state are claiming, in good faith, that decedent was domiciled therein at the time of his death and have taken steps to impose a tax on all the assets of the estate within their taxing jurisdiction, including intangibles (which constitute the overwhelming majority of the assets of the estate). In each state, the personal representative of decedent's estate is contesting the state's claim, asserting that decedent died domiciled in Nevada, the only state in the nation without death taxes. Both California and Texas compute their inheritance taxes on the basis of the fair market value of the estate's assets at the time of the decedent's death and both maintain a "pick-up tax" to ensure that the state receives the maximum amount allowable as a federal tax credit for state death taxes paid.

III. FACTUAL BACKGROUND

3. Howard Robard Hughes, Jr., was born in Texas in 1905. He resided in Texas until 1926, when he became a California domiciliary. He resided in California continuously until 1966 and acquired extensive business holdings and relationships there. Mr. Hughes filed non-resident income tax returns in California but paid tax at the resident rate (i.e., on all his income). His only known extended absence from California during this forty-year period was in 1953-54, when he temporarily resided in Nevada. After leaving California in 1966, Mr. Hughes travelled successively to Boston, Las Vegas, the Bahamas, Nicaragua, Canada, Florida, London, the Bahamas and Mexico, living in hotel rooms in the various locales but never acquiring another domicile. During this period, decedent retained his personal and business ties to California and the "nerve center" of his business operations remained there. Mr. Hughes died on

April 5, 1976, in an airplane en route to Houston, Texas.

IV. PENDING PROCEEDINGS

4. On April 14, 1976, nine days after the death of Mr. Hughes, probate proceedings were opened by representatives of the estate in the courts of Texas, Nevada and California. Annette Gano Lummis and William Lummis were appointed Co-Temporary Administrators of the Estate by Probate Court No. 2 of Harris County, Texas, while the nominees of Mrs. Lummis, First National Bank of Nevada and Richard C. Gano, were appointed Special Administrators of the estate by the probate courts of Nevada and California, respectively. Subsequently, William R. Lummis was added as a Co-Special Administrator in the Nevada proceeding.

5. On June 10, 1976, the State of Texas filed an appearance in the Texas probate proceedings, contending, *inter alia,* that Hughes was a Texas domiciliary at the time of his death and asserting its statutory inheritance tax lien against all assets within the Texas jurisdiction, including intangibles. The Texas Co-Temporary Administrators of the estate have resisted Texas' claims and asserted that Hughes acquired first a California and then a Nevada domicile. In addition, an alleged holographic will has been offered for probate; its validity has been challenged. A jury trial on the domicile and holographic will issues is presently set for November 14, 1977, with determination of the amount of tax to be left to a separate

proceeding in the event of a finding of Texas domicile. California is not a party to and therefore will not be bound by any judgment entered in the Texas proceedings.

6. California Inheritance Tax proceedings began with the appointment by the Superior Court, Los Angeles County, of an Inheritance Tax Referee to inventory and appraise the estate under California Probate Code §605 and California Revenue and Taxation Code §14501 *et seq.* On August 24, 1977, the California Special Administrator submitted the California Inheritance Tax Declaration to the Referee. The Special Administrator's Declaration asserted that decedent was a Nevada domiciliary and reported only tangible personal and real property located in California. The Inheritance Tax Referee has informed the Controller that he intends to file a report stating that there is now due an inheritance tax on the entire estate, less the real and tangible personal property located outside of California, on the basis that decedent was a California domiciliary. Notice of the filing of the report will be sent as required by law to all known persons potentially liable for tax. Objections to the Report based, *inter alia,* on the claim of Nevada domicile, will be filed. The question of decedent's domicile is therefore an issue in the California proceedings.

7. The State of Nevada imposes no inheritance tax. In the Nevada proceedings, the issues being litigated include the validity of a holographic will which has been offered for probate and the question of

domicile. In addition, a claim is pending by the Howard Hughes Medical Institute, a nonprofit corporation, that pursuant to an alleged lost will all the assets of the estate were devised to it. Texas, but not California, has appeared in the Nevada proceedings, claiming Hughes as its domiciliary and asserting its statutory lien. Trial on the validity of the holographic will is presently scheduled to commence on November 7, 1977, with trial of the domicile question to be heard subsequently. No trial is presently set on the lost will claim.

8. On May 4, 1976, Summa Corporation instituted an interpleader action in the Chancery Court of New Castle County, Delaware, seeking cancellation of its outstanding shares in decedent's name and direction from the court as to whom the shares should be reissued. Delaware jurisdiction was asserted on the basis of 8 DEL. C. §169, which provides that the situs of shares in a Delaware corporation is Delaware, regardless of where the physical certificates representing the shares are located. On the date the complaint was filed, the Delaware Chancery Court entered an order requiring Summa to recognize William Lummis, contemporaneously appointed as ancillary administrator of the estate in Delaware, as its sole shareholder *pendente lite*. The California Controller is not a party to the Delaware suit and will not be bound by any judgment entered therein.

9. At present, the issue of decedent's domicile is pending in the courts of California, Texas and Nevada, with the estate, through the personal representative in each state, asserting Nevada domicile in each jurisdiction. No state court, however, has reached a determination on the domicile issue. Neither Texas nor California is, or will become, a party to the proceedings in the other's courts, with the result that neither will be bound by an adverse determination in the other's forum. Under established principles of law, the courts of each state may render contradictory findings of domicile and those conflicting determinations would not be subject to review by this Court.

V. CONTROVERSY BETWEEN STATES

10. In its federal estate tax return, filed on June 29, 1977, the estate placed a value on its gross assets (as of October 5, 1976, six months after decedent's death, as permitted by 26 U.S.C. §2032) of $166,800,140. Deductions for expenses of administration, debts of decedent and liens on the estate's assets totaling $114,974,274 plus a $60,000 exemption were claimed, leaving a net estate of $51,765,866. Should the estate's valuation be accepted by the Internal Revenue Service, the federal estate tax levied on the net estate will be approximately $30,488,978, assuming decedent was domiciled in California or Texas, in which event the full federal tax credit for state inheritance taxes will be available as claimed by the estate. The estate will also be liable for interest on its tax obligation of at least $1,778,442 (which represents the interest from January 6, 1977, nine months after decedent's death to November 6, 1977), thus raising the total

tax obligation owing to the federal government to $32,267,400. For the Court's convenience the calculations leading to this figure are set forth in Appendix "A" hereto.

11. Should the Texas courts determine decedent to have been a Texas domiciliary, the estate's Texas liability (including accrued interest at the statutory rate through November 6, 1977 and the Texas "pick-up tax") will be $8,146,886, assuming that Texas accepts the estate's valuation of its assets and that the whole estate would go to Hughes' aunt or cousins. For the Court's convenience the calculations leading to this figure are set forth in Appendix "A" hereto.

12. Should the California courts accept the estate's valuation of its assets and determine that decedent was a California domiciliary, the estate's California tax liability (including interest at the statutory rate of 12% through November 6, 1977) will be $32,195,010. (The calculations leading to this figure are set forth in Appendix "A" hereto). The proportion of the estate going to California is significantly larger than the maximum rate of 24% would indicate, because the deductions allowable in California are some $67 million less than those recognizable under federal and Texas law, thus leaving a taxable estate for California tax purposes of $122,089,004 as opposed to the federal taxable estate of approximately $51 million.

13. If the estate's valuation of its assets set forth in the federal estate tax return were accepted by the federal government, California and Texas, the total tax liability for state and federal taxes would be

$72,609,296, thus exceeding the net estate by approximately $21 million. If the United States and Texas were to collect the taxes claimed by them, the estate would be left with only $11,351,580 with which to satisfy California's tax and interest claim of more than $32 million.

14. The actual values of the estate's assets may be significantly greater than as reported by the estate in its federal estate tax return. The Internal Revenue Service and California (and, presumably, Texas) are each in the process of determining administratively the value of the estate. If the assets of the estate are found to have a greater value than as reported, the amount by which the taxes exceed the net assets will be increased.

15. Because neither California nor Texas will become a party to the proceedings in the other state, and because there is no other means by which the conflicting tax claims of Texas and California can be resolved, this Court is the only forum which can determine the question of decedent's domicile in a manner which will bind the interested parties and assure that the state of domicile, if California or Texas, will be able to collect the tax. On information and belief, California further alleges that the estate has suffered and may continue to suffer substantial losses since the date of decedent's death which, especially in light of the interest which continues to accrue on unpaid death tax liabilities, exacerbates the risk that California will be able to collect the full amount of taxes and interest owed to it. Accordingly, California will

be irreparably injured if Texas is permitted to impose and collect an inheritance tax based on a determination by a Texas court of a Texas domicile.

16. The uncertainty as to the location of decedent's domicile impairs the ability of the interested parties to resolve the conflicting inheritance tax claims by settlement. Specifically, the interested intestate heirs, the various administrators of the California, Texas and Nevada estates, and the State of California have agreed upon a provisional settlement whereby California's inheritance tax claim—contested by the heirs and administrators on the ground that decedent was a Nevada domiciliary—could be compromised. However, because Texas asserts an inheritance tax as alleged herein, the compromise of California's inheritance tax claim pursuant to this provisional settlement agreement cannot be effected because the heirs and administrators are unwilling to bind themselves to pay an inheritance tax to California so long as the Texas tax claim is unresolved and threatens them with multiple tax liability. If this Court determines that Texas was not the state of decedent's domicile, the provisional settlement will be effected and the tax claim of California will accordingly be resolved and compromised pursuant to the provisional settlement agreement. The provisional settlement agreement will be of no force and effect if this Court declines to exercise its original jurisdiction herein.

17. This suit is being brought on behalf of the State of California to protect its statutory inheritance tax lien on decedent's estate and to collect any lawfully imposed tax thereon, and not on behalf of the estate or any other person or entity.

WHEREFORE, plaintiff prays that:

(a) The Court grant leave to file the instant complaint and issue its summons to the defendant named herein;

(b) The Court refer the matter to a Special Master;

(c) The Court declare that Texas was not the State of decedent's domicile on the date of his death; and

(d) The Court grant such other and further relief as may be just and proper.

DATED: November 11, 1977.

Respectfully,

MYRON SIEDORF
Chief Inheritance Tax Attorney
JAMES R. BIRNBERG
Assistant Inheritance Tax Attorney

JEROME B. FALK, JR.
STEVEN L. MAYER
HOWARD, PRIM, RICE, NEMEROVSKI,
CANADY & POLLAK
A Professional Corporation
Attorneys for Plaintiff

(Appendix "A" Follows)

Appendix "A"

Appendix "A"

COMPUTATION OF FEDERAL ESTATE TAX AND DEATH TAXES FOR CALIFORNIA AND TEXAS

(Assuming Values Per Federal Estate Tax Return)

	Federal	Texas[1]	California[2]	Total Federal and State Taxes
Total Gross Estate	$166,800,140	$166,800,140	$169,995,076	
Total Deductions, etc.	115,034,274	114,974,274	47,906,072	
Taxable Estate	$ 51,765,866	$ 51,825,866	$122,089,004	
Gross Estate Taxes	38,247,917	7,729,690	29,268,191	
Credit for State Death Taxes	7,758,939			
Net Taxes	30,488,978	7,729,690	29,268,191	
Add: Pick-up Tax		29,249	—	
Interest (1/6/77 to 11/6/77)	1,778,422	387,947	2,926,819	
Total Taxes and Interest	$ 32,267,400	$ 8,146,886	$ 26,128,129	$72,609,296

[1]The calculation of the Texas tax assumes use of the alternate valuation date and the allowance of all deductions claimed on the federal tax return. The applicable tax rate assumes that the entire estate will pass to persons who are either an aunt or a cousin of decedent. Interest is computed at 6%, commencing nine months after date of death.

[2]The value of the gross estate is larger than shown in the federal estate tax because California law does not allow use of the alternate valuation date. The deductions allowed also differ from those permitted under federal law. Interest under California law runs at 12%, commencing nine months after the date of death.